



Signed and Filed: November 28, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case No. 22-30028-DM
)
E. LYNN SCHOENMANN,) Chapter 11
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)
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Debtor.)
)
)
)
) Adversary Case No. 22-3019
)
STUART GORDON SCHOENMANN)
) INDIVIDUALLY AND AS EXECUTOR OF)
) THE ESTATE OF DONN R.)
) SCHOENMANN; CELESTE LYTLE; BETH)
) SCHOENMANN; COLETTE SIMS,)
)
) Plaintiffs,)
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)
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v.)
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)
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E. LYNN SCHOENMANN,)
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)
)
Defendant.)
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MEMORANDUM DECISION DENYING MOTION FOR SUMMARY JUDGMENT

I. Introduction

On November 3, 2022, the court held a hearing on Plaintiffs Stuart Gordon Schoenmann (individually and as executor of the estate of Donn R. Schoenmann), Celeste Lytle, Beth Schoenmann,

1 and Colette Sims' ("Plaintiffs") Motion for Partial Summary
2 Judgment ("MSJ") (Dkt. 25). Though the MSJ is styled as a
3 motion for partial summary judgment, it seeks summary judgment
4 as to all claims of nondischargeability asserted against
5 Defendant E. Lynn Schoenmann (Defendant) under 11 U.S.C.
6 §§ 523(a)(2)(A), (a)(4), and (a)(6). The MSJ is based mainly on
7 the application of issue preclusion to the findings within the
8 Marin County Superior Court's Tentative Decision ("Tentative
9 Decision") which nullified a post marital agreement ("PMA")
10 between Defendant and her late husband, Donn. The court denied
11 summary judgment as to 11 U.S.C. § 523(a)(6), because no part
12 of the MSJ established that Defendant's actions were either
13 willful or malicious, and took remainder of the MSJ under
14 submission.

15 For the reasons stated below, the court will DENY summary
16 judgment as to the rest of the MSJ.

17 II. Standard for Summary Judgment

18 On a motion for summary judgment, the court must determine
19 whether, viewing the evidence in the light most favorable to the
20 nonmoving party, there are any genuine issues of material fact
21 as to any claim, part of claim, defense, or part of defense.
22 *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322
23 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary
24 judgment against a party is appropriate when the pleadings,
25 depositions, answers to interrogatories, and admissions on file,
26 together with the affidavits, if any, show that there is no
27 genuine issue as to any material fact and that the moving party
28 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

1 III. Standard for Issue Preclusion

2 Summary judgment is appropriate if all elements of a claim
3 were previously adjudicated under the doctrine of issue
4 preclusion. "Principles of collateral estoppel apply to
5 proceedings seeking exceptions from discharge brought under 11
6 U.S.C. § 523(a)." *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir.
7 2001). Bankruptcy courts determine the preclusive effect of a
8 state court judgment by the preclusion law of the state court.
9 *Id.* In California, the doctrine may be applied, and summary
10 judgment granted if (1) the issue is identical to what was
11 decided in the prior proceeding; (2) the issue was actually
12 litigated in the prior proceeding; (3) the issue was necessarily
13 decided in the prior proceeding; (4) the decision in the prior
14 proceeding is final and on the merits; and (5) the party against
15 whom preclusion is sought is identical to or in privity with the
16 party to the prior proceeding. *See Lucido v. Superior Court*, 51
17 Cal.3d 335, 341 (Cal. 1990). Even if these elements are met,
18 courts also determine whether the "application of preclusion
19 furthers the public policies underlying the doctrine." *In re*
20 *Harmon*, 250 F.3d at 1245.

21 "The 'identical issue' requirement addresses whether
22 'identical factual allegations' are at stake in the two
23 proceedings, not whether the ultimate issues or dispositions are
24 the same." *Lucido v. Superior Court*, 51 Cal.3d at 341. For a
25 matter to be considered "necessarily decided," "courts have
26 previously required only that the issue not have been 'entirely
27 unnecessary' to the judgment in the initial proceeding." *Id.*
28 (citations omitted).

1 In this matter, there is no argument that the parties
2 involved in the Superior Court matter and this case are
3 identical, that the issues there were actually litigated, and
4 that the Tentative Decision is final for purposes of this MSJ.
5 The first and third elements of *Lucido*, whether the issues are
6 identical and were necessarily decided, must be considered here.
7 There is no public policy component that calls into question the
8 application of preclusion principles.

9 IV. The Superior Court's Tentative Decision

10 Due to an agreed-upon bifurcation of claims, the Tentative
11 Decision determined only that the PMA was invalid. In
12 California, "[i]f it is determined that [the PMA] *unfairly*
13 benefits one spouse over the other, the agreement will be
14 presumed to be the result of undue influence and the agreement
15 will be set aside unless the advantaged spouse is able to prove
16 by a preponderance of the evidence that the agreement was not
17 obtained through undue influence." Tentative Decision at p. 12
18 (citations omitted).

19 The Tentative Decision determined that the PMA unfairly
20 advantaged Defendant over Donn and further concluded that Donn's
21 assent to the PMA was a result of undue influence. Analyzing
22 the elements of undue influence, the Tentative Decision found
23 that Donn's decision to sign the PMA was not freely and
24 voluntarily made, Donn did not have knowledge of all the facts
25 surrounding the PMA, but that Donn *did* have a complete
26 understanding of the effect of the PMA. To support its
27 determination regarding Donn's lack of knowledge, the Tentative
28 Decision found that when the PMA was signed, Donn could not have

1 known the true value of all assets, though he did understand
2 that those assets would ultimately go to the Defendant as a
3 result of the PMA.

4 Plaintiffs rely on the above determinations and the
5 underlying findings regarding the concealment or
6 misrepresentation of the value of real property and retirement
7 account to support an argument for summary judgment on both
8 claims of nondischargeability discussed below.

9 V. 11 U.S.C. § 523(a)(2)(A)

10 A successful claim pursuant to 11 U.S.C. § 523(a)(2)(A)
11 ("subsection (a)(2)(A)") requires a showing of five elements:
12 "(1) misrepresentation, fraudulent omission, or deceptive
13 conduct by the debtor; (2) knowledge of the falsity or
14 deceptiveness of [the debtor's] statement or conduct; (3) an
15 intent to deceive; (4) justifiable reliance by the creditor on
16 the debtor's statement or conduct; and (5) damage to the
17 creditor proximately caused by his reliance on the debtor's
18 statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v.*
19 *Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000)
20 (citations omitted). Plaintiffs argue that Defendant, knowingly
21 and with an intent to deceive, misrepresented the amount of
22 money in her retirement account and the value of the Mill Valley
23 property, that Donn relied on those misrepresentations to sign
24 the PMA, and the PMA's unfair advantage to Defendant harmed
25 Donn.

26 As to the first and third elements of nondischargeability
27 under subsection (a)(2)(A), Plaintiffs argue these are satisfied
28 by the Tentative Decision's finding that Defendant

1 "affirmatively and intentionally misrepresented the values of
2 both the Mill Valley property as well as her retirement
3 account." This court is not convinced that the Superior Court's
4 conclusions regarding the retirement account are entirely
5 consistent with the court's own recitation of facts. However,
6 consistent with *Lucido*, it accepts this finding was necessarily
7 decided by the Superior Court, and that the finding was not
8 entirely unnecessary to the Superior Court's conclusion that the
9 PMA was invalid. Accordingly, this court agrees that it is
10 bound by the Superior Court's findings as to the first and third
11 elements of subsection (a) (2) (A).

12 Next, Plaintiffs argue that the Superior Court also
13 necessarily determined the second element, Defendant's knowledge
14 of the falsity of her statements, because the PMA was a document
15 relating to marital assets and Donn was essentially excused from
16 investigating the valuations provided by Defendant, and as noted
17 above, the court further found the Defendant affirmatively
18 misrepresented the value of her retirement account and the Mill
19 Valley property. The court questions whether an excuse from
20 investigation on Donn's part is necessarily a decision regarding
21 Defendant's knowledge. Nonetheless, as it appears that the
22 Superior Court decided that Defendant was unable to prove Donn
23 had full knowledge of all facts when signing the PMA was in part
24 because she affirmatively made misrepresentations, it must
25 accept that she knew those misrepresentations were untrue as an
26 actually litigated and necessarily determined fact.

27 As to the fourth element, no part of the Tentative Decision
28 relates to Donn's justifiable reliance. Instead, the Plaintiffs

1 assert that Donn's signing of the PMA shows that he relied on
2 Defendant's misrepresentations. This assertion is contradicted
3 by the Tentative Decision which found that Donn did have a
4 complete understanding of the effect of the PMA, and that he
5 signed the PMA because he wished to live out his days in the
6 family home and he saw the PMA as the only means to fulfill that
7 wish. There are no facts within the Tentative Decision that can
8 lead this court to find that the element of justifiable reliance
9 has been established for the purpose of issue preclusion, and,
10 of course, for a determination of nondischargeability.

11 Regarding the element of damages, the Superior Court
12 quantified Lynn's understatement of the value of the marital
13 assets in the PMA "by more than \$1.0 million" (See Tentative
14 Decision, at 25:1-2). In doing so, it referred specifically to
15 the misrepresentations of the valuation of the retirement
16 account and the value of the Mill Valley property in the PMA in
17 November, 2016. This court must and does accept that in doing
18 so, that court had a basis to impose liability in at least that
19 amount pursuant to the findings used to invalidate the PMA.

20 Nevertheless, given the lack of facts in the Tentative
21 Decision that could establish the element of justifiable
22 reliance, and the absence of proof of any nondischargeable
23 damages (discussed, *infra*), the court must deny summary judgment
24 as to subsection (a) (2) (A).

25 VI. 11 U.S.C. § 523(a) (4)

26 No debts that are obtained by "fraud or defalcation while
27 acting in a fiduciary capacity, embezzlement, or larceny" may
28

1 discharged. 11 U.S.C. § 523(a)(4) ("subsection (a)(4)"). There
2 are no allegations of embezzlement or larceny.

3 Fraud by a fiduciary is still fraud. If Plaintiffs believe
4 Defendant's debts to them are nondischargeable because of
5 subsection (a)(4) fraud, they have not satisfied the relevant
6 element of reliance (as discussed in subsection (a)(2)(A),
7 *supra*).

8 Defalcation by a fiduciary requires a showing that (1) the
9 debtor occupied a fiduciary relationship in relation to the
10 creditor; and (2) the debtor misappropriated funds or otherwise
11 breached a fiduciary duty in an act of bad faith, moral
12 turpitude, or an act by the debtor that was either intentionally
13 wrongful or the "reckless conduct of the kind that the criminal
14 law often treats as the equivalent." *Bullock v. BankChampaign*,
15 N.A. 569 U.S. 267, 274 (2013).

16 As to the first element, there is no dispute that
17 Defendant, as Donn's spouse, had a fiduciary relationship with
18 Donn.

19 As to the second element, Plaintiffs assert that through
20 the invalidated PMA Defendant has wrongfully taken an
21 unspecified amount of Donn's separate and community property.
22 Plaintiffs assert a litany of acts allegedly undertaken by
23 Defendant to obtain the PMA as well as post-petition acts that
24 allegedly illustrate Defendant's misappropriation of Donn's
25 assets.

26 Whatever Defendant may or may not have done after filing
27 bankruptcy is wholly unrelated to this proceeding for
28 nondischargeability of pre-bankruptcy debts.

1 Any acts not conclusively established by the Tentative
2 Decision, material or not, are heavily and hotly contested and
3 not appropriate for evaluation at the summary judgment stage.
4 In any event, the conduct of Defendant that led the Superior
5 Court to find abuse and other acts to invalidate the PMA are not
6 identical to the type of conduct the Supreme Court now requires,
7 as noted above, to impose nondischargeable consequences on a
8 fiduciary for defalcation under subsection (a)(4). The court
9 did not analyze Defendant's apparent defalcation or fraud by a
10 fiduciary under the lens now required by *Bullock*.

11 Far beyond the Tentative Decision's findings regarding
12 Defendant's retirement funds or the value of the Mill Valley
13 property, Plaintiffs' contention is that Defendant received
14 community assets and has either not returned them to the probate
15 estate or disposed of them in the manner of a fiduciary. This
16 extends far beyond the scope of the Tentative Decision's
17 findings that are binding on this court. Any assertion that
18 community property not having been turned over is a result of
19 defalcation is to ignore the procedural posture of this dispute;
20 the community property held by Defendant as a result of the
21 invalidated PMA is also property of Defendant's bankruptcy
22 estate, and need not be turned over until this court so
23 determines.

24 Additionally, while the Tentative Decision finds that
25 Defendant's misrepresentations regarding the value of her
26 retirement account were intentional, the Tentative Decision does
27 not discuss Defendant's state of mind when she actually
28 transferred that money in May, 2016. The understatement of

1 value of Mill Valley was a statement regarding the house's value
2 in its current state in August 2016. Because the Superior Court
3 did not analyze when these events occurred but instead focused
4 on when they were misrepresented, this court cannot conclude
5 that it necessarily decided the same issue it must in order to
6 impose nondischargeability for her actions by way of issue
7 preclusion. For that reason alone, the MSJ must be denied.

8 In either case, Plaintiffs have not shown that the
9 Tentative Decision imposed any damages at all for either the
10 transfer of the \$480,000 from Defendant's retirement account in
11 May, 2016 (as distinguished from the nondisclosure of that
12 transfer at the time of the PMA) or the misrepresentation of the
13 value of the Mill Vally property (as distinguished from the
14 subsequent misrepresentation of that value at the time of the
15 PMA) to show nondischargeable damages. Nothing in the Tentative
16 Decision establishes nondischargeable damages for this conduct,
17 and that is an additional reason to deny the MSJ.

18 VII. Conclusion

19 For the reasons stated at the hearing and in this
20 Memorandum Decision, the MSJ is denied. The court is issuing
21 an Order concurrently with this Memorandum Decision that is
22 consistent with its conclusions.

23 **END OF MEMORANDUM DECISION**
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